

# SENATE COMMITTEE ON FINANCE



## INTERIM CHARGE RECOMMENDATIONS TO THE 80TH LEGISLATURE

JANUARY 2007

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**Report on**  
**Wire Transfer Fees**

# SENATE FINANCE COMMITTEE

79th Legislature

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SENATOR JUDITH ZAFFIRINI, Vice Chair  
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January 2007

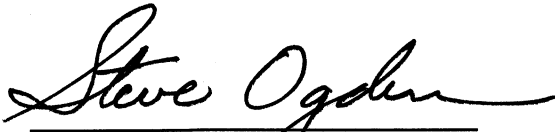
The Honorable David Dewhurst  
Lieutenant Governor  
State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

Dear Governor Dewhurst:

The Senate Finance Committee respectfully submits this report regarding the Committee's Interim Charge #9: Determine the number of commercial and consumer transactions, including wire transfers, that occur in Texas. Determine the amount of monies that are sent internationally from Texas. Study the feasibility of creating a pilot program in Harris County that captures a percentage of revenues from such transactions, and request an Opinion for the Attorney General's Office to pursue these revenues as a potential source for health care funding.

We thank you for providing us the opportunity to address these important issues.

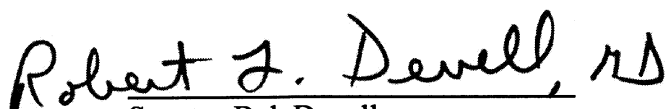
Respectfully submitted,

  
Senator Stephen E. Ogden, Chair

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Senator Judith Zaffirini, Vice-Chair

  
Senator Kip Averitt

  
Senator Kim Brimer

  
Senator Bob Deuell

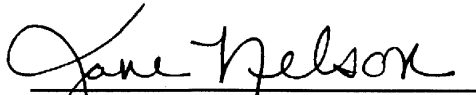
  
Senator Robert Duncan






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Senator Juan "Chuy" Hinojosa

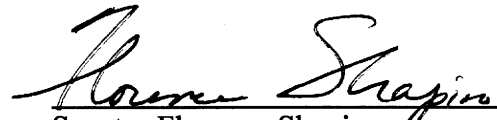
  
Senator Jane Nelson

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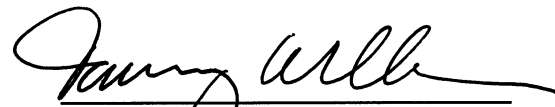
Senator Todd Staples

  
Senator John Whitmire

  
Senator Kyle Janek

  
Senator Florence Shapiro

  
Senator Royce West

  
Senator Tommy Williams

## Committees

Vice Chair, Finance

Chair, Subcommittee on Higher  
Education

Chair, Subcommittee on Capital  
Funding for Higher Education  
Legislative Budget Board



**Judith Zaffirini**  
State Senator, District 21  
President Pro Tempore, 1997

## Committees

Education

Health and Human Services

International Relations and Trade

December 22, 2006

Senator Steve Ogden, Chair  
Senate Finance Committee  
Texas Legislature  
Austin, Texas 78711

Dear Chair Ogden:

Thank you for your leadership as Chair of the Senate Finance Committee. It is my privilege to serve with you, and I appreciate the opportunity to share my perspective about the interim report to the 80th Legislature regarding wire transfers. Although the final draft does not make any specific recommendations, I cannot sign it and submit this letter to record some of my abiding concerns.

As I mentioned at our October 10, 2006, hearings, I believe strongly that any attempt to tax wire transfers would be challenged in the courts under the constitutional provision regulating interstate and international commerce. What's more, several of my constituents voiced concerns about how this tax would affect banks based in Texas. We agree that persons simply would move their accounts to banks outside the state to avoid paying this tax and that larger banks with presences in other states easily could avoid charging it. This would place Texas banks at a disadvantage.

Of greater concern is the issue that this tax would target mainly one minority and economic group. Although applied to all out-of-country transfers, the majority of those paying it would be low-income Mexicans.

I look forward to continuing working with you and other members of the committee when we convene on January 9.

May God bless you.

Very truly yours,

A handwritten signature in cursive script that reads "Judith Zaffirini".

Judith Zaffirini

Capitol Office: P.O. Box 12068 • Austin, Texas 78711 • 512/463-0121 • Fax 512/475-3738 • Dial 711 For Relay Calls

South District Office: P.O. Box 627 • Laredo, Texas 78042-0627 • 956/722-2293 • Fax 956/722-8586

North District Office: 12702 Coeppertwein Road #214 • San Antonio, Texas 78233 • 210/657-0095 • Fax 210/657-0262

## **EXECUTIVE SUMMARY**

During the 79<sup>th</sup> interim, the Senate Committee on Finance reviewed the available data on the number and value of wire transfers that occur in Texas, the legality of levying a fee on these transactions, and feasibility of collecting such a fee and using the fee to fund indigent care.

On October 10, 2006, the Committee heard invited and public testimony on these issues. The Department of Banking and Comptroller of Public Accounts testified on the data available to each respective agency to assist the Legislature in determining the relevant information on the volume of wire transfers. Commissioner Garcia from Harris County Precinct 2 provided public testimony on using proceeds from a fee on wire transfers to fund indigent care.

On October 3, 2006, Senator West requested an opinion from the Office of the Attorney General on the legality of collection and usage of fee revenue. No opinion has been issued by the Office as of yet.

According to all available data reported to the Committee, the total amount of money transferred from Texas to Latin America was estimated to be \$3,180,000,000 in 2004<sup>1</sup>. All of the data provided to the Committee was based on a survey prepared by Bendixen and Associates for Inter-American Development Bank. On October 18, 2006, Inter-American Development Bank updated the survey. The new estimate for the amount sent from Texas to Latin America for 2006 was \$5,222,000,000<sup>2</sup>. No data was provided to the Committee on the total amount of money sent to all foreign countries from Texas.

The Comptroller of Public Accounts estimated that a 50 cent fee per wire transfer with a cap of \$5 per transaction would yield roughly \$17 million to the State annually once fully

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<sup>1</sup> Inter-American Development Bank. Available at: <http://www.iadb.org/exr/remittances/texas.cfm>. Accessed November 20, 2006.

<sup>2</sup> Inter-American Development Bank. Available at: [http://www.iadb.org/mif/remittances/usa/USA.cfm?language=English&ITEM1ID=2&ITEM2ID=2&PARID=2&ID\\_STATE=TX](http://www.iadb.org/mif/remittances/usa/USA.cfm?language=English&ITEM1ID=2&ITEM2ID=2&PARID=2&ID_STATE=TX). Accessed November 20, 2006.

implemented in 2008<sup>3</sup>. In addition, the Comptroller estimated that a 10% fee for customers who did not show proof of legal US residence would generate \$90 million in 2008<sup>4</sup>.

### **SUMMARY OF RECOMMENDATIONS FOR THE 80TH LEGISLATURE**

1. Upon review of available data, the Inter-American Development Bank is sole source of data to conclude on the amount of money that flows from Texas to foreign countries through remittances.
2. No recommendation will be concluded on the feasibility of a pilot program until receipt of Attorney General Opinion on RQ-0540-GA.

### **PROCEDURAL BACKGROUND**

The Senate Committee on Finance (Committee) was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Committee met in accordance with the following interim charge as follows:

**Remittance Fees.** Determine the number of commercial and consumer transactions, including wire transfers, that occur in Texas. Determine the amount of monies that are sent internationally from Texas. Study the feasibility of creating a pilot program in Harris County that captures a percentage of revenues from such transactions, and request an Opinion from the Attorney General's Office to pursue these revenues as a potential source of health care funding.

The Committee met pursuant to the aforementioned interim charge in a public hearing in Austin, Texas, on October 10, 2006, to consider invited testimony provided by the Texas Department of Banking and the Texas Comptroller of Public Accounts Office. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on October 10, 2006.

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<sup>3</sup> Texas Comptroller of Public Accounts, Testimony to the Senate Committee on Finance (Austin, TX, October 10, 2005).

<sup>4</sup> Texas Comptroller of Public Accounts, Letter to Representative Van Arsdale, May 11, 2006.

The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

## **BACKGROUND**

During the 79<sup>th</sup> Legislature, Senator West and Representative Luna sponsored SB 1501/ HB 2345 which offered the idea of assessing a fee on consumer wire transfers leaving Texas with the final destination abroad. The fee would be 50 cents per \$100 per transaction with a cap on the fee of \$5 per transaction. Questions were raised on the availability and quality of data to compile an accurate fiscal note and the legality of assessing a fee on wire transfers. Due to the limitation of time, SB 1501 was left pending in the Committee on April 18, 2005.

During the interim, the Committee heard invited testimony from the Texas Department of Banking and Comptroller of Public Accounts. In addition, several interested parties offered public testimony on the concept of collecting a fee on wire transfers where the revenues from the fee would assist counties in Texas with funding indigent care.

## **TRANSACTIONS**

The Committee was provided information on the number of transactions that occur in Texas, the value of transactions that originate in Texas with the final destination abroad and a comparison of three company's current fee structure on wire transfers. The information was provided by the Department of Banking and the Comptroller of Public Accounts. The information provided by the two agencies was based on a survey by Bendixen and Associates and does not include the 2006 data because the survey was not released until October 13, 2006.

Below is a chart that summarizes the findings from Bendixen and Associates for the survey conducted in 2004 and 2006.

Remittances from Texas to Latin America Source: Inter-American Development Bank <sup>5</sup>		
Year	2006	2004
Total Amount Sent	\$5,222,000,000	\$3,180,000,000
Number of Latin American adult immigrants	2,832,784	2,547,203
Average Amount sent per Latin American adult immigrant	Not Reported	\$1,248
Percentage of immigrants that send money regularly	47%	43%
Average number of times sent per year	12	12.9
Average amount sent with each remittance	\$300	\$225

Since the Department of Banking does not regulate wire transfer fees in Texas, the Department contacted five money service businesses (MSB) to inquire about the current fee structure in place, three MSB's provided the requested information. Fees on these transactions vary by country of destination and days to delivery. The cost for an individual to send the average amount as identified by Bendixen and Associates would range from \$9.99 to \$29.00<sup>6</sup>.

### **REVENUES**

The Committee was provided three concepts of a fee that could be applied to wire transfers. Senator West's bill outlined a 50 cent fee per \$100 per transaction with a cap at \$5 on all consumer transactions that originate in Texas with the final destination abroad. The 5 year revenue projection from the Comptroller of Public Accounts is included in the chart below<sup>7</sup>.

<sup>5</sup> Inter-American Development Bank, Supra Note 1,2.

<sup>6</sup> Texas Department of Banking, Testimony to the Senate Committee on Finance (Austin, TX, October 10, 2006).

<sup>7</sup> Texas Comptroller of Public Accounts , Supra Note 3.

Fiscal Year	Gain/(Loss) in Tax Revenue
2007	\$10,925,000
2008	\$16,023,000
2009	\$17,304,000
2010	\$18,343,000
2011	\$19,260,000

On April 21, 2006, Representative Van Arsdale asked the Comptroller to provide his office with an estimate of revenues from a 10% tax on all international wire transfers where customers cannot show proof that they are legally present in the United States. The Comptroller produced the following the figures<sup>8</sup>:

Fiscal Year	Gain/(Loss) in Tax Revenue
2007	\$61,957,000
2008	\$89,217,000
2009	\$94,571,000
2010	\$99,299,000
2011	\$103,271,000

In October 2006, the Texas Conservative Coalition Research Institute issued a report titled "State Approaches to Illegal Immigration". The report laid out the Institute's recommendation to impose a fee on remittances sent to Latin America from Texas. The revenue collected from the fee should be deposited into an indigent health care support account. The institute recommended an 8% fee on the total amount wired on any transaction that originates in

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<sup>8</sup> Texas Comptroller of Public Accounts , Supra Note 4.

Texas with the final destination in Latin America. The report provided no revenue estimates of this proposal.

As a point of comparison, the Health and Human Services Commission provided testimony on October 10, 2006, on a separate interim charge that the commission estimates the cost of uncompensated care to be between \$443 million and \$2.3 billion annually for the State of Texas<sup>9</sup>.

### **LEGALITY**

The Lieutenant Governor charged the committee with requesting an opinion from the Attorney General's Office. On October 3, 2006, Senator West requested an opinion. The request # is RQ-0540-GA. The request was for an opinion on the following issues:

1. Whether the international wire transfer fee, as proposed in S.B. 1501, violates the Equal Protection Clause of the U.S. Constitution.
2. Whether the international wire transfer, as proposed in S.B. 1501, violates the foreign commerce clause in the U.S. Constitution Article 1, §8, cl.3.
3. Whether the international wire transfer fee, as proposed in S.B. 1501, is a tax on international wire transfers rather than a fee.

The Office of Attorney General has 180 days from the receipt (October 10, 2006) of the request to issue an opinion. To date no opinion has been issued.

### **FEASIBILITY**

The Committee was charged with determining the feasibility of creating a pilot program in Harris County where the fee collected from international wire transfers would be sent to the

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<sup>9</sup> Health and Human Service Commission, Testimony to the Senate Committee on Finance (Austin, TX, October 10, 2006).



county hospital that is responsible for providing indigent care for that county. Public testimony was provided by Harris County Commissioner - Precinct 2. Commissioner Garcia spoke in support of Senator West's bill and urged the committee to report favorably on this issue.

The feasibility of creating a pilot program such as the one supported by Commissioner Garcia is directly linked to the legality of this proposed fee. The feasibility of a pilot program can not be determined until the Office of Attorney General has issued an opinion on this matter.

### **RECOMMENDATIONS**

The Senate Committee on Finance reports the following to the 80th Legislature to consider taking appropriate action on the following in regard to wire transfer fees.

1. Upon review of available data, the Inter-American Development Bank is the sole source of data to conclude on the amount of money that flows from Texas to foreign countries through remittances.
2. No recommendation will be concluded on the feasibility of a pilot program until receipt of Attorney General Opinion on RQ-0540-GA.

**REPORT ON THE  
DRIVER RESPONSIBILITY PROGRAM**

# SENATE FINANCE COMMITTEE

79th Legislature

SENATOR STEVE OGDEN, Chair  
SENATOR JUDITH ZAFFIRINI, Vice Chair  
SENATOR KIP AVERITT  
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January 2007

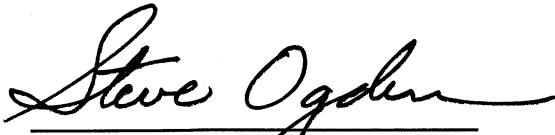
The Honorable David Dewhurst  
Lieutenant Governor  
State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

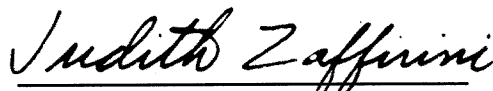
Dear Governor Dewhurst:

The Senate Finance Committee respectfully submits this report regarding the Committee's Interim Charge #6: Study the method through which fees are collected under the Driver's Responsibility Program in order to maximize the amount of money for trauma funding and transportation. Look specifically at collection rates and develop means to enhance them.

We thank you for providing us the opportunity to address these important issues.

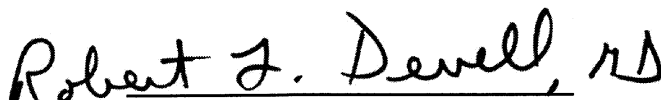
Respectfully submitted,

  
Senator Stephen E. Ogden, Chair

  
Senator Judith Zaffirini, Vice-Chair

  
Senator Kip Averitt

  
Senator Kim Brimer

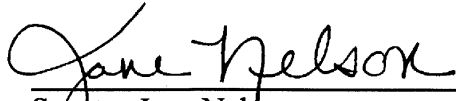
  
Senator Bob Deuell

  
Senator Robert Duncan



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Senator Juan "Chuy" Hinojosa

  
Senator Jane Nelson

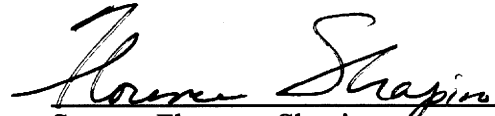
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Senator Todd Staples

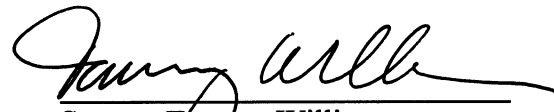
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Senator John Whitmire

  
Senator Kyle Janek

  
Senator Florence Shapiro

  
Senator Royce West

  
Senator Tommy Williams

## **EXECUTIVE SUMMARY**

The Driver Responsibility Program, created by the 78th Legislature, penalizes Texas drivers who commit specific driving offenses, by requiring that the driver pay a surcharge in order to retain the privilege of having a driver's license. The Texas Department of Safety currently administers the program, and the Department has contracted with a vendor to send out surcharge notices. Once a driver has been assessed a surcharge, statistics show that overall collection rates for the driver responsibility surcharges have been below expectations. At the end of fiscal year 2006, the program's overall collection rate is at approximately 28 percent, and the program's overall compliance rate (full collection plus compliance with installment plans) was approximately 32 percent. Of all surcharges billed, over 50 percent of surcharge assessments have led to license suspension rather than payment. The goal of this interim charge is to examine the issue of Driver Responsibility Program collection rates and make recommendations for improving driver compliance with payment of assessed surcharges.

## **SUMMARY OF RECOMMENDATIONS FOR THE 80TH LEGISLATURE**

1. Due to historically low collection and compliance rates, the legislature should either overhaul the Driver Responsibility Program to achieve higher collection rates or discontinue the Driver Responsibility Program in its entirety.
2. In overhauling the Driver Responsibility Program, the legislature should consider making changes that allow drivers to more easily comply with the Driver Responsibility Program, while at the same time strengthening penalties for non-compliance with the program. Possible changes include the following:
  - a. Amend the Transportation Code to lower the surcharges levied under the Driver Responsibility Program. Currently, a majority of drivers who receive a surcharge notice either choose not to pay or are unable to pay the surcharges, resulting in their driver's licenses being suspended for non-payment of surcharges. Maintaining a system that leads drivers to consider driving without a valid license a viable option is contrary to good public policy.

- b. Allow the performance of public service as a means to pay off surcharges. This recommendation would provide an inexpensive option for violators to pay their penalties and comply with the law.
- c. Link the prompt payment of surcharges with the restoration of driving privileges. The legislature should consider amending the statutes to require a driver to be current on payment of Driver Responsibility Program surcharges before being issued any occupational license after a DWI conviction.
- d. Provide additional tools for compliance enforcement. The legislature should consider amending the Transportation Code to allow for additional surcharge collection incentives that could include the filing of personal property liens and credit bureau reports, as well as the possibility of suspending professional, hunting or fishing licenses, on account of non-payment of surcharges.

### **PROCEDURAL BACKGROUND**

The Senate Committee on Finance (Committee) was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Committee met in accordance with the following interim charge as follows:

Study the method through which fees are collected under the Driver's Responsibility Program in order to maximize the amount of money for trauma funding and transportation. Look specifically at collection rates and develop means to enhance them.

The Committee met pursuant to the aforementioned interim charge in a public hearing in Austin, Texas, on February 1, 2006, to consider invited testimony provided by the Legislative Budget Board, the State Auditor's Office, and the Texas Department of Public Safety. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on February 1, 2006. The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

## **BACKGROUND**

The Driver Responsibility Program was created by the 78th Legislature to encourage good driving by penalizing drivers who break the law. Under the program, committing or being convicted of specific offenses can result in a driver having to pay a financial surcharge to retain a driver's license. Once a driver has been assessed a surcharge, statistics show that overall collection rates for the driver responsibility surcharges have been below expectations. The purpose of this interim charge is to explore this issue and address the problem of low collection rates.

## **CURRENT PROGRAM**

### **Program Description**

The Driver Responsibility Program (DRP) was enacted by House Bill 3588, 78th Legislature, Regular Session and amended by House Bill 2, 78th Legislature, 3rd Special Session. The statutory reference for the program is found in Chapter 708, of the Texas Transportation Code.

Essentially, the Driver Responsibility Program imposes surcharges based on driving violations. A driver is held responsible to pay a surcharge under two scenarios. Under the first scenario, a driver is assigned points upon committing a Class C misdemeanor and is assessed a surcharge if the accrual of those points reaches a certain level. In the second scenario, drivers who receive a conviction for specific offenses, such as "Driving While Intoxicated" or "No Motor Vehicle Liability Insurance" is assessed an annual surcharge for three years from the date of conviction.

The Driver Responsibility Program is administered by the Department of Public Safety (DPS). The DPS is currently contracted with a third party vendor to process surcharge notices

and payment collections. The initial program notices were sent out in September 2004, based upon violations or convictions occurring on or after September 1, 2003. Notices are subsequently sent monthly.

Driver Responsibility Program surcharges are classified under one of the following four categories:

1. **Points Accumulation:** The holder of a Texas driver's license will receive 2 points for a moving violation or 3 points for a moving violation that results in an accident. Each year a surcharge is assessed if six or more points is accumulated during the preceding 36 months. The surcharge amount is \$100 for the first six points and \$25 for each additional point.
2. **Intoxication:** The surcharge for a first offense DWI is \$1,000. The surcharge for a second or subsequent DWI conviction is \$1,500, and the surcharge is \$2,000 for a DWI if the alcohol concentration is 0.16 or more. The surcharge is levied once a year for three years.
3. **No Insurance/Driving While License Inactivated (DWLI):** The annual surcharge for driving while a license is invalid or without proof of financial responsibility is \$250 a year for three years.
4. **No Driver's License:** The surcharge for driving without a license or driving with an expired license is \$100. The surcharge is levied once a year for three years.

### Funds Allocation

One percent (1%) of the funds collected under the Driver Responsibility Program are appropriated to DPS for Program Administration. Forty-nine and one-half percent (49.5%) of the funds collected are sent to the GR-Dedicated Trauma Facility and EMS Account #5111. Lastly, 49.5% of the fees collected under the Driver Responsibility Program go to the General Revenue Fund. The Driver Responsibility statute further specifies that after the total deposits from the Driver Responsibility Program and the \$30 State Traffic Fine into General Revenue exceed \$250 million a year, any additional revenues shall be deposited in the Texas Mobility Fund #365.



### **Collection of Surcharges**

Statute allows DPS to enter into a contract with a vendor for the collection of surcharges. The statute also specifies that vendor compensation for collection may not exceed 30 percent of the amount of surcharges and related costs collected. If an individual has not paid the surcharge by the 30th day after notification, the statute specifies that his or her license is automatically suspended.

A contract was awarded to the Municipal Services Bureau (MSB) on August 26, 2005 for the collection of surcharges. The contract allows the vendor, Municipal Services Bureau, to collect 4 percent over the surcharge amount as base compensation. Other vendor compensation includes fees for phone transactions, credit card transactions, and installment plans.

### **Surcharges**

On September 30, 2004, the vendor began collection of surcharges for the state, and according to the Texas Department of Public Safety, the following statistics are since the inception of the Driver Responsibility Program, as of the end of August 2006. There have been 1,511,097 surcharge cases generated by the Driver Responsibility Program. This includes initial notices, as well as second year surcharge notices. At the end of FY 06, were a total of 819,783 individual drivers who have cases in the Driver Responsibility Program. This represents approximately 4% of all persons in Texas who are licensed to drive or hold a Texas Identification Card.

<b>Driver Responsibility Program Cases as of 08/31/06</b>				
(Source: Texas Department of Public Safety)				
Points	Intoxication	No Insurance/DWLI	No Driver's License	Total
28,333	183,446	904,135	395,183	1,511,097

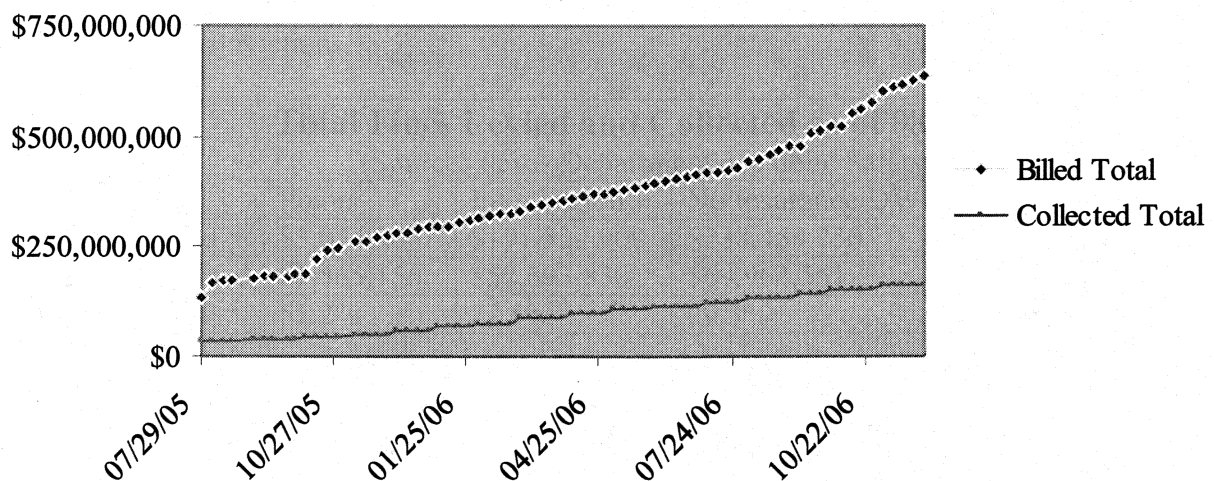
### **Revenues Billed and Collected**

The Driver Responsibility Program has generated a total of \$478,704,791 in billed assessments from inception to August 31, 2006. However, as of that date, only \$132,848,617 in surcharges have been collected, for an overall collection rate of approximately 28%. The majority of assessments were for driving while intoxicated and "no insurance" or "driving while license inactive" convictions.

<b>Total Fines Levied and Collected as of 08/31/06</b> (Source: Texas Department of Public Safety)				
	Points	Intoxication	No Insurance/DWLI	No Driver's License
Total Fines Levied	\$3,054,966	\$191,322,900	\$238,459,750	\$45,857,175
Total Fines Collected	\$1,565,156	\$52,693,830	\$69,962,561	\$8,620,797
Total % Collected	51.2%	27.5%	29.3%	18.8%

The graph below demonstrates the growing disparity between the revenues assessed and collected.

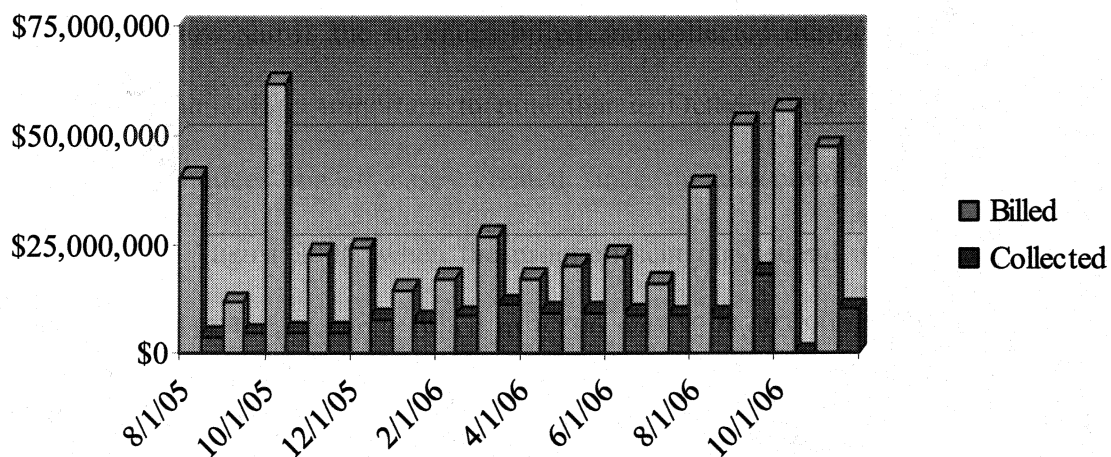
**Driver Responsibility Program Revenues Billed and Collected  
(Cumulative)**



(Source: Texas Department of Public Safety)

The chart below shows the revenues billed and collected during FY06 for the Driver Responsibility Program. It is important to note that in October 2005, the program sent out second anniversary notices for all cases created since the inception of the program. Also important to note is August 2006, when the program sent out second anniversary notices for unlicensed drivers. The total revenue billed in FY06 was \$294,693,900, and revenue collected was \$100,342,413. The significance of comparing the combined collection rates for FY 05 and FY 06 to the collection rates for FY 06 alone, is that the collection rate is 34 percent for FY 06 alone, a small improvement over the total collection rate for FY 05 and FY06 of 28 percent.

**DRP Revenue Billed and Collected**



(Source: Texas Department of Public Safety)

### **Compliance**

The graph on the next page illustrates the percentage of compliance for Driver Responsibility Program cases by category. The greatest level of compliance is for “Points” assessments (61%), while the lowest is for “No Driver License” assessments (22%). The overall

program compliance rate as of August 31, 2006, from the beginning of the program, is thirty-two percent (32%).

<b>Compliance Rates of the Driver Responsibility Program (FY 2005 &amp; 2006)</b> (Source: Texas Department of Public Safety)					
	Points	Intoxication	No Insurance/DWLI	No Driver's License	Total
Outstanding	11,143	115,594	586,643	306,329	1,019,709
Complied	17,190	67,852	317,492	88,854	491,388
% Complied	61%	37%	35%	22%	32%

### **Compliance Status by Surcharge Notice**

The following chart illustrates the number and percentage of surcharge notices that are in compliance and subsequently the number and percentage of surcharge notices resulting in suspension as of August 31, 2006.

<b>Compliance and Suspension Status</b> (Source: Texas Department of Public Safety)					
	Points	Intoxication	No Insurance/ DWLI	No Driver's License	Total
Total Notices	28,333	183,446	904,135	395,183	1,511,097
Notices in Compliance	17,190	67,852	317,492	88,854	491,388
% in Compliance	61%	37%	35%	22.5%	32.5%
Notices in Suspension	7,135	100,699	494,689	226,360	828,883
% in Suspension	25%	55%	55%	57%	55%

### **Findings by the State Auditor's Office**

Initial implementation of the Driver Responsibility Program began in September 2004, and in February 2005 the Driver Responsibility Program was audited by the Office of the State Auditor. The audit report prepared by the State Auditor was released in July 2005. In the report, *"An Audit Report on the Department of Public Safety's Implementation of the Driver Responsibility Program"* - Report Number 05-040-July 2005, the State Auditor's Office concluded the following:

"The Department of Public Safety (Department) has not fully implemented the Driver Responsibility Program (Program), which became effective on September 1, 2003. More than a year and a half after the Program's effective date, the Department is not assessing and billing all statutorily required surcharges outlined in Chapter 708 of the Texas Transportation Code. As of the end of February 2005, it had not assessed and billed at least \$25 million."

The audit report also noted:

"Of the amount that had been assessed and billed as of the end of February 2005, only 20 percent had been collected."

The auditor's office explained the collection rate of 20% in February 2005 in the following manner:

"The Program was projected to have a collection rate of 66 percent for the first three years. However, the Department's fiscal analyses for the Program-related bills noted that the projected collection rate may have been overestimated because it was based on fees that were much lower than the proposed Program surcharges."

The auditor's office also explained:

"Minimal collection efforts have contributed to the lower-than-projected collection rate. Thirty-five percent of offender accounts are in compliance, meaning that these offenders have either paid in full or are current on their installment payments."

Further illustrating their findings, the report identifies:

"Because the Department lacks sufficient monitoring, it cannot provide assurance that the collections vendor has adequate collection and accounting processes and is depositing all the collected surcharges into the Treasury. We identified significant weaknesses in the vendor's collection and accounting processes that increase the risk of errors, theft, and fraud."

The auditor's report also says:

"The Department is currently conducting a criminal investigation into allegations that some Program funds have been stolen. For the purposes of this report, the amounts allegedly stolen are not material when compared with the amount assessed and collected. However, this situation illustrates the risks created by the weaknesses in the vendor's operations."

### **DPS Compliance with Audit Recommendations**

During the February 2006 testimony before the Senate Committee on Finance, Colonel Davis of the Texas Department of Public Safety, acknowledged in response to the audit, that the Driver Responsibility Program was not fully implemented at the time of the audit review and that

the department was fully committed and working to resolve any outstanding items noted in the audit report.

At the same hearing, Colonel Davis also explained, that in retrospect, the initial estimated collection ability of the Department for the Driver Responsibility Program was overestimated by the Department. The initial estimate of a compliance rate of 66% for the program was based on the Department's experience with collecting the \$100 fee charged to reinstate a suspended license. In contrast, the "Driver Responsibility Fee" charges for no insurance, no driver's license or DWI are much higher - ranging from \$250 to \$2500 surcharge each year for 3 years. In the Colonel's opinion, the higher fine amounts definitely adversely affect compliance with the Driver Responsibility Program.

As of Fall 2006, DPS has asserted in post hearing follow-up, that programming is completed and the vendor is now assessing all statutorily required penalties including penalties assessed to all unlicensed drivers. Additionally, the vendor, Municipal Services Bureau, has recently completed a business practice manual and has strengthened collection and accounting processes to address concerns about insufficient monitoring and weaknesses in collection and accounting processes.

The allegation concerning the theft of funds from the surcharge program was investigated by the Department. The vendor's employee was dismissed, and the funds were recovered. Additional security measures, including camera monitoring, secure access to the money room, the use of money counting equipment, and a separation of verification processes have been implemented by the vendor.

### **Biennial Revenue Estimates**

The following chart illustrates that actual collections, while not reaching the levels anticipated when the legislation was formulated, are at least reaching and surpassing the Comptroller's official Biennial Revenue Estimate (BRE).

<b>Driver Responsibility Program Collection Comparison</b> (in millions) (Source: Texas Department of Public Safety & Texas Comptroller of Public Accounts)					
	FY 2005		FY 2006		FY 2007
	Actual	BRE	Actual	BRE	BRE
General Revenue	\$0.4	\$0.4	\$49.7	\$38.6	\$58.97
Trauma Fund #5111	\$18.2	\$17.8	\$48.7	\$37.8	\$57.8
Mobility Fund \$365	\$18.2	\$17.8	\$0	\$0	\$0
Total	36.8	36.8	98.4	76.4	116.77

### **DPS Suggestions to Improve Collection Rates**

Col. Davis explained during the agency's February 2006 hearing testimony that the Department was working with the vendor to address the 22% rate of return for non-delivery of mail, and the vendor is considering upgrading its U.S. Postal Service delivery to "FASTforward" to address this high non-delivery rate. In post-hearing follow-up with the Texas Department of Public Safety, a program director explained that in July 2006, the vendor implemented the National Change of Address (NCOA) program through the U. S. Postal Service. This service allows the vendor to immediately obtain a more valid address if one exists. All initial notices are still mailed to the address on record with the Department as required by statute, but all subsequent notices are processed through NCOA.

Also suggested by the Colonel was changing the law to require that a "Driver Responsibility" fine for a DWI conviction be paid before an occupational license is issued. For persons who are convicted of and suspended for DWI, they must petition a judge to obtain an occupational license to operate a non-commercial motor vehicle. The judge will authorize the

issuance of the occupational license with the appropriate location and time restrictions, and the Department will issue the license once notification of the judge's decision is received.

### **How Do Other States Collect Driver Responsibility Fees**

**Michigan** - Michigan law is similar to Texas law. In both states, a driver receives a notice to pay the Driver Responsibility fee, and if the driver fails to pay or to enter into an installment agreement by the deadline in the notice, driving privileges are suspended until full payment is made. In both states, once a suspension is in effect, the driver is required to pay a reinstatement fee before the suspension is lifted. However, unlike the State of Texas, Michigan's Department of Treasury can take further collection action, including wage levies, income tax offsets, and levies against bank accounts or other assets.

**New Jersey** - If a driver does not pay Driver Responsibility surcharges in New Jersey, the New Jersey Motor Vehicle Commission suspends driving privileges indefinitely and takes action in State Superior Court. Court action may include securing a lien against the driver's property or garnishing wages.

### **RECOMMENDATIONS**

The Senate Committee on Finance recommends that the 80th Legislature consider taking appropriate action to effectuate the following recommendations:

1. Due to historically low collection and compliance rates, the legislature should either overhaul the Driver Responsibility Program to achieve higher collection rates or discontinue the Driver Responsibility Program in its entirety.
2. In overhauling the Driver Responsibility Program, the legislature should consider making changes that allow drivers to more easily comply with the Driver Responsibility Program, while at the same time strengthening penalties for non-compliance with the program. Possible changes include the following:



- a. Amend the Transportation Code to lower the surcharges levied under the Driver Responsibility Program. Currently, a majority of drivers who receive a surcharge notice either choose not to pay or are unable to pay the surcharges, resulting in their driver's licenses being suspended for non-payment of surcharges. Maintaining a system that leads drivers to consider driving without a valid license a viable option is contrary to good public policy.
- b. Allow the performance of public service as a means to pay off surcharges. This recommendation would provide an inexpensive option for violators to pay their penalties and comply with the law.
- c. Link the prompt payment of surcharges with the restoration of driving privileges. The legislature should consider amending the statutes to require a driver to be current on payment of Driver Responsibility Program surcharges before being issued any occupational license after a DWI conviction.
- d. Provide additional tools for compliance enforcement. The legislature should consider amending the Transportation Code to allow for additional surcharge collection incentives that could include the filing of personal property liens and credit bureau reports, as well as the possibility of suspending professional, hunting or fishing licenses, on account of non-payment of surcharges.

## **RESOURCE MATERIALS**

1. Legislative Budget Board, Testimony to the House Committee on Appropriations (May 9, 2006).
2. *"An Audit Report on the Department of Public Safety's Implementation of the Driver Responsibility Program,"* Texas State Auditor's Office, Report Number 05-040, July 2005.
3. Texas Department of Public Safety, Testimony to the Senate Committee on Finance, (February 1, 2006).
4. *"Driver Responsibility Program Overview, Week of August 28-September 1, 2006,"* Texas Department of Public Safety.
5. Michigan Driver Responsibility Program Brochure. Available at <http://www.michigan.gov/driverresponsibility>.
6. New Jersey Motor Vehicle Commission Surcharge Website. Available at <http://www.state.nj.us/mvc/violations/surcharges.htm>.

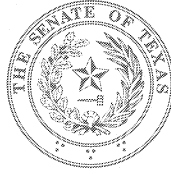
**Report on Medicaid Fraud,  
Hospital Reimbursement and  
Uncompensated Care**

# SENATE FINANCE COMMITTEE

79th Legislature

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SENATOR JUDITH ZAFFIRINI, Vice Chair  
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January 2007

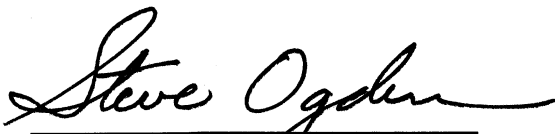
The Honorable David Dewhurst  
Lieutenant Governor  
State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

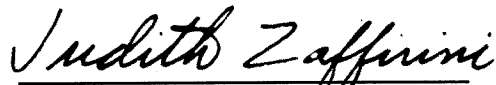
Dear Governor Dewhurst:

The Senate Finance Committee respectfully submits this report regarding the Committee's Interim Charge #4: Review health care funding, focusing on the Medicaid program, particularly Medicaid Fraud, as well as Medicare Part D, hospital reimbursements, and trauma and indigent care.

We thank you for providing us the opportunity to address these important issues.

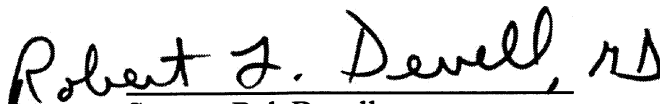
Respectfully submitted,

  
Senator Stephen E. Ogden, Chair

  
Senator Judith Zaffirini, Vice-Chair

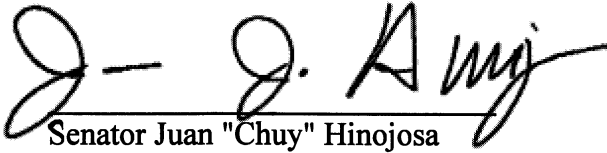
  
Senator Kip Averitt

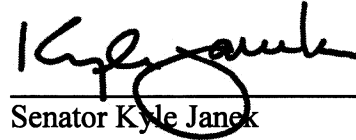
  
Senator Kim Brimer

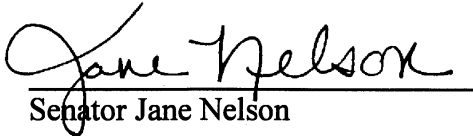
  
Senator Bob Deuell

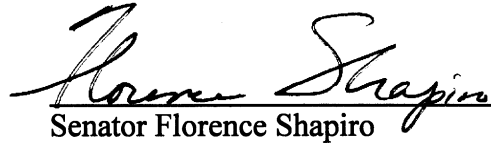
  
Senator Robert Duncan




  
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Senator Juan "Chuy" Hinojosa

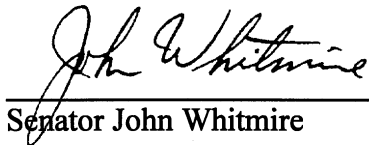
  
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Senator Kyle Janek

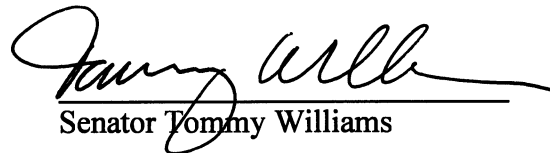
  
\_\_\_\_\_  
Senator Jane Nelson

  
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Senator Florence Shapiro

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Senator Todd Staples

  
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Senator Royce West

  
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Senator John Whitmire

  
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Senator Tommy Williams

## **EXECUTIVE SUMMARY**

Health and human services expenditures are a large and rapidly-growing aspect of the Texas state budget, totaling \$48.2 billion in All Funds for the 2006-2007 biennium or 35 percent of all state appropriations. Health care and its associated expenses are also among the largest drivers in our biennial state budget. The Senate Committee on Finance was given specific charges related to health and human services and health care cost-related issues on which to examine and report. They include:

- Chapter 1: Medicaid Fraud
- Chapter 2: Hospital Reimbursement and Uncompensated Care

This report addresses each of the above-referenced charges and includes recommendations where improvements can be made. Additionally, appendices are attached to provide further data when necessary.

### **Summary of Recommendations to the 80th Legislature**

1. Clearly establish the independence of the Office of Inspector General (OIG) by prohibiting transferability out of OIG's budget, creating a free standing state agency similar in nature to the State Auditor's Office (SAO) or by providing the funding outside the purview of the Health and Human Services Commission (HHSC) (budget independent with administrative cooperation).
2. Provide additional funding to the OIG to address the Medicaid funds at risk that are not currently being addressed.
3. Implement criminal history background checks for all Medicaid providers. This is a one-time only check and expense as OIG would be notified by the Department of Public Safety (DPS) of any future arrests.
4. Implement a new Medicaid hospital reimbursement system based on sound cost reimbursement principles.
5. The reporting of uncompensated care (defined to include bad debt, charity care and unreimbursed care) by Texas hospitals should be consistent for all hospitals and subjected

to a standard set of adjustments that account for payments to hospitals that are intended to reimburse uncompensated care.

6. The state should consider all sources of revenue when restructuring the reimbursement system to better match public money with the money spent for public good. The issue is not only the value of uncompensated care being provided but also how much cost-shifting is taking place to pay for the uncompensated care.

## **PROCEDURAL BACKGROUND**

The Senate Committee on Finance (Committee) was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that were identified. The Committee met in accordance with the following interim charge as follows:

Review health care funding, focusing on the Medicaid program, Medicare Part D, hospital reimbursements and trauma and indigent care.

The Committee met pursuant to the aforementioned interim charge in public hearings in Austin, Texas on January 18, 2006, February 22, 2006 and again on October 10, 2006 to consider invited testimony provided by HHSC. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on October 10, 2006. The Committee extends its thanks to those who participated in the hearing and assisted with or made presentations before the Committee.

## **CHAPTER 1: MEDICAID FRAUD**

### **BACKGROUND**

Health and human services are a significant and growing portion of the Texas state budget with health care funding intertwined into numerous programs. Appropriations for the health and human services functions for the 2006-07 biennium total \$48.2 billion in All Funds or

35 percent of all state appropriations.<sup>1</sup> The United States Government Accountability Office (GAO) estimates the amount of Medicaid fraud, waste, and abuse to be between 10 and 17 percent, which totals between \$4 and \$8 billion in Texas. Texas Inspector General Brian Flood explained how the GAO arrived at the 10-17% figure. "Approximately ten percent is the conservative percentage assigned to actual fraud that falls within state and federal definitions. An additional four percent is estimated to be abuse and waste caused by policy violations and documentation errors. Lastly, three percent is estimated to be the direct result of state policies that unintentionally allow abuse and fraud." <sup>2</sup> The issue of Medicaid fraud was brought to the attention of the Senate Finance Committee in October 2005 in a letter by Harris County Grand Jury Foreman, Trisha S. Pollard.<sup>3</sup>

### **CURRENT SYSTEM**

In retrospect, the 78<sup>th</sup> Legislature (2003) was visionary when it created the semi-independent Office of the Inspector General (OIG) within the Health and Human Services Commission (HHSC) to recover funds lost to waste, abuse, and fraud for Medicaid and other federally funded programs. In FY 04-05, OIG in cooperation with the Office of the Attorney General (OAG), recovered \$791,144,589 and cost avoided \$751,999,121.<sup>4</sup> However, this is still only a fraction of the estimated \$4-\$8 billion currently at risk in Texas. Also, the OIG coordinates the referral of criminal cases to the OAG.

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<sup>1</sup> Fiscal Size-Up: 2006-07 Biennium, Legislative Budget Board, December 2005

<sup>2</sup> Brian G. Flood, Inspector General, Texas Health and Human Services Commission, September 2006

<sup>3</sup> T. Pollard, letter, October 28, 2005

<sup>4</sup> Semi-Annual Report, Office of Inspector General, September 2004, and Semi-Annual Report, Office of Inspector General, September 2005

### **THE OFFICE OF THE ATTORNEY GENERAL (OAG)**

Although the OAG and OIG share responsibility for the prevention, detection, and investigation of fraud in the Medicaid program, their functions are separate and distinct. Generally, the OAG's function is specific to criminal investigative and enforcement activities while the OIG's function is specific to administrative investigative and enforcement activities.

The OAG is authorized via federal grant to operate the State Medicaid Fraud Control Unit (MFCU) to conduct criminal investigations of allegations of fraud, physical abuse, and criminal neglect by Medicaid healthcare providers. A MFCU must be separate and distinct from the state Medicaid agency, and it does not receive federal funding either from or through the state Medicaid agency. Common OAG criminal investigations include assaults and criminal neglect of patients in Medicaid facilities, fraudulent billings by Medicaid providers, misappropriation of patient trust funds, drug diversions, and filing of false information by Medicaid providers. MFCU investigators often work cases with other state and federal law enforcement agencies.

### **THE OFFICE OF INSPECTOR GENERAL (OIG)**

The OIG is authorized under the Government Code, §531.102 to investigate fraud and abuse in all health and human services programs, including cases involving Medicaid providers and recipients, and to enforce state law relating to the services performed in all health and human services programs, including Medicaid. The OIG's Chief Counsel and Enforcement Divisions coordinate closely with the OAG as it relates to provider investigations and sanction actions.

The OIG's Enforcement Division's Medicaid Provider Integrity Section makes decisions concerning the enrollment and continued participation of providers; investigates allegations of



waste, fraud, and abuse involving Medicaid providers and other health and human services programs; refers cases and leads to law enforcement agencies, licensure boards, and regulatory agencies; refers complaints to the MFCU; provides investigative support and technical assistance to other OIG divisions and some outside agencies; and monitors recoupments of Medicaid overpayments, civil monetary penalties, damages, and other administrative sanctions.

The OIG's Chief Counsel's Sanctions Section imposes administrative enforcement intervention and/or adverse actions on providers of various state health care programs found to have committed Medicaid fraud, waste, or abuse in accordance with state and federal statutes, regulations, rules or directives, and investigative findings. The Sanctions Section also monitors the recoupment of Medicaid overpayments, damages, penalties; negotiates settlements and/or conducts informal reviews; as well as prepares agency cases, and provides expert testimony and support at administrative hearings and other legal proceedings against Medicaid providers.

OIG recovered and cost avoided approximately \$1.5 billion for the FY 04-05 biennium with a budget of approximately \$70 million and roughly 517 full time employees (FTEs). This represents a return of approximately 21 dollars for each budget dollar. OIG has accomplished this by using leveraged technology to maximize recoveries, maximizing investigation efficiencies, and identification of additional funds at risk. OIG has identified significant additional funds at risk in the Medicaid program, particularly in regards to hospital reimbursements. To address these risks, an analysis of state and federal mandates applicable to OIG, such as increased workloads and the Federal Deficit Reduction Act of 2005, was performed. It showed an actual need for 224 new FTEs. However, the draft exceptional item request relating to OIG for the FY 08-09 biennium includes only 85 new FTEs. The proposed 85 new staff would be used to address only high-dollar risks, forgoing pursuit of lower dollar

potential recoveries while maintaining, at a minimum, the ability to accomplish state and federal mandates.

### **DEFICIT REDUCTION ACT (DRA)**

The federal Deficit Reduction Act (DRA) of 2005 provided for the creation of the Medicaid Integrity Program and includes specific appropriations that the Centers for Medicare and Medicaid Services (CMS) can use to fund activities to support antifraud and abuse efforts. Under the DRA, CMS will hire an additional 100 employees to work with states in support and oversight of their Medicaid program integrity efforts and to develop a comprehensive plan to explain how it will address Medicaid fraud, waste, and abuse. The DRA provided additional funds to expand a program designed to identify vulnerabilities in Medicaid and Medicare by examining billing and payment abnormalities in both programs. The DRA was passed in response to Congressional concerns that insufficient federal and state oversight put the Medicaid program at significant risk for improper payments (*e.g.*, payments made due to mistakes, abuse, or fraud). (*See GAO-06-578T, Medicaid Integrity*).

### **ISSUES WITHIN THE SYSTEM**

The federal government has recently changed the landscape for waste, abuse and fraud by adopting new rules, some of which correspond with changes recommended by the Texas Senate Committee on Health and Human Services (SCHHS). The recommended changes by SCHHS are necessary to not only stay at the forefront of the recovery of funds lost due to waste, abuse, and fraud, but are also necessary to prevent the imposition of federal penalties and the loss of significant amounts of federal funding. CMS signaled the new direction when it noted in its 2006 review of New York's Medicaid Program that "being in compliance with the minimum

regulatory standards is not the same as having an effective fraud and abuse program.” CMS further noted that New York’s level of oversight of the Medicaid Integrity Program was not “commensurate with the risk incurred by its Medicaid program.”<sup>5</sup> CMS is in the process of hiring 100 personnel plus multiple national contractors to audit every state’s Medicaid program and set an error rate every three years with requisite recoupments, penalties, and loss of funds to the states. CMS is the first of many federal agencies that will be using this process to look at all state agencies receiving significant amounts of federal funds. Additionally, CMS is requiring each state to have an independent audit group reviewing the error rate every year.<sup>6</sup>

The new CMS accountability and independence requirements emphasize the need for an independent inspector general, which the SCHHS previously identified. An independent OIG is needed to meet required professional standards, to maximize recovery and cost avoidance, and to resolve the inherent conflicting duties and responsibilities between HHSC and an OIG. OIG’s independent ability to look, not just externally, but internally at HHSC agencies was also questioned. Specifically, the SCHHS reported, “Because the OIG is a division within HHSC, HHSC has budget authority over the OIG, leading some to question the division’s independence.”<sup>7</sup> The professional standards for both auditing and inspector general offices require independence. These standards prohibit undue influence that might appear to limit the scope of the OIG’s work or restrict funds or other resources dedicated to the OIG.

The Texas system has placed within HHSC both the Medicaid payor and the Medicaid auditor/investigator, the OIG. This is the same relationship that existed in New York, was

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<sup>5</sup> Department of Health and Human Services, Centers for Medicare & Medicaid Service, Medicaid Integrity Program, Review of Program Integrity Procedures- Final Report-State of New York-May 2006

<sup>6</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, 42 CFR Parts 431 and 457, *Federal Register*, Vol. 71, No. 166, August 28, 2006

<sup>7</sup> *Interim Report to the 79<sup>th</sup> Legislature*, Texas Senate Health and Human Services Committee, December 2004, p. 44

condemned, and redesigned. This design was noted as creating an “inevitable conflict.”<sup>8</sup> This conflict was also noted in the January 2006 Senate Finance Committee hearings. Another example of this inevitable conflict is the July 2006 recommendation of the Health and Human Services Commission Council (Council), as contrasted with the goals of the HHSC Medicaid program. The Council directed OIG to increase sanctions activity against institutions or providers for billing abuses and aggressively exclude physicians with criminal histories from the program. At the same time, HHSC was attempting to increase the number of providers participating in the Medicaid program.<sup>9</sup> Independence is required to ensure accountability and good stewardship, to resolve the inherent conflict, and to provide assurance to the legislature and the public that the OIG is unbiased by “pressures that affect the selection of areas for review, the performance of those reviews, and the objective reporting of conclusions without fear of censure.”

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## **RECOMMENDATIONS**

The Senate Committee on Finance recommends that the 80th Legislature consider taking appropriate action to effectuate the following in regard to Medicaid fraud:

1. Clearly establish the independence of the Office of Inspector General (OIG) by prohibiting transferability out of OIG's budget, creating a free standing state agency similar in nature to the State Auditor's Office (SAO) or by providing the funding outside the purview of the Health and Human Services Commission (HHSC) (budget independent with administrative cooperation).
2. Provide additional funding to the OIG to address the Medicaid funds at risk that are not currently being addressed.

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<sup>8</sup> *NY Governor Plans Agency to Fight Medicaid Fraud*, by Clifford Levy, *New York Times*, January 14, 2006

<sup>9</sup> Health and Human Services Commission Council Meeting, July 20, 2006

<sup>10</sup> Principles and Standards for Offices of Inspector General, Association of Inspectors General, May 2004 Revision, p. 9

3. Implement criminal history background checks for all Medicaid providers. This is a one-time only check and expense as OIG would be notified by the Department of Public Safety (DPS) of any future arrests.

## **CHAPTER 2: HOSPITAL REIMBURSEMENT**

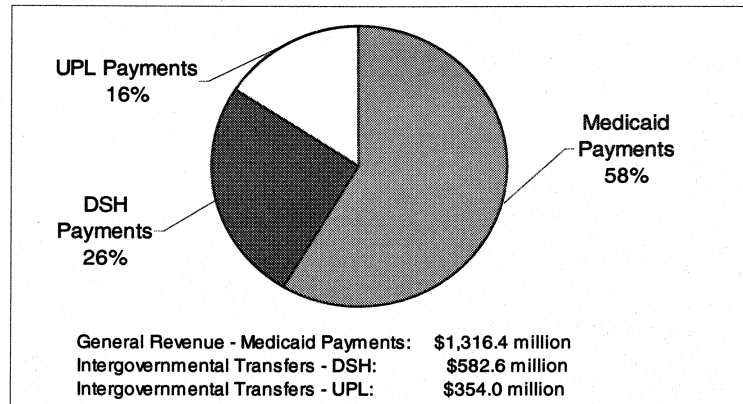
### **BACKGROUND**

In February 2006, the Senate Committee on Finance conducted the first of two hearings over Hospital Funding and Uncompensated Care in Texas. The first hearing included an overview of the major Medicaid reimbursement methodologies: Disproportionate Share Hospitals (DSH), Upper Payment Limit (UPL) and Diagnosis Related Groups (DRG). The objective was to "demonstrate how these different funding streams interact to generate total Medicaid funding for a hospital and to show how these funding streams impact state and local financing strategies." <sup>11</sup> During the interim, HHSC began studying the current hospital reimbursement methodologies and uncompensated care costs as reported by Texas hospitals (Senate Bill 1, 79th Legislature, Regular Session, 2005, Article II, HHSC, Riders 60 and 61) in preparation of making recommendations to the 80th Legislature. The October 2006 Senate Finance follow-up hearing addressed the Rider 60 and 61 reports along with preliminary issues associated with reforming the current Medicaid reimbursement system. Below is a breakout of the different funding streams that come together to fund hospitals.

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<sup>11</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, February 22, 2006, p. 2

**FY 2005 Medicaid Hospital Funding  
(State & Federal)<sup>12</sup>**



**RIDER 60: MEDICAID PROVIDER REIMBURSEMENT**

The Rider 60 report calls for transforming the hospital reimbursement methodology by using objective measures to demonstrate that expenditures are reasonable, necessary and based on sound cost reimbursement principals. This will enhance HHSC's ability "to be a prudent purchaser of Medicaid services."<sup>13</sup> Transforming the hospital reimbursement methodology can include capping the reimbursement of administration and capital costs, rebasing hospital rates or raising hospital rates.

During the February 2006 hearing, a significant point of discussion was the amount of hospital public funding that flows outside the legislative appropriations process. Regarding hospital UPL, the main publicly-owned hospitals or hospital districts that generate these supplemental payments are Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Midland, Tarrant, Travis, Potter, and Randall counties.

<sup>12</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, February 22, 2006, p. 9

<sup>13</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, October 10, 2006, p. 23

### **RIDER 61: STUDY REGARDING UNCOMPENSATED CARE**

Prior to the Rider 61 study, an agreed upon, commonly used definition of uncompensated care did not exist. Therefore, HHSC was directed to conduct a study to authoritatively define and quantify the issue of uncompensated care in Texas hospitals.

Rider 61 defines uncompensated care as "the sum of bad debt and charity care after being reduced to cost, and after all patient-specific and non-specific funding have been accounted for and applied." <sup>14</sup> Below is an illustration provided by the Health and Human Service Commission of the adjustments made when calculating uncompensated care.

1	Aggregate charges: bad debt and charity care (with transparent definition of both components)
2	Adjustment from charges to cost by uniform Ratio of Costs to Charges (RCC) (selected and uniformly applied after comments considered from relevant stakeholders)
3	Subtraction of patient-specific payments received for otherwise uncompensated care
4	Subtraction of federal DSH and UPL payments
5	Subtraction of other payments received for otherwise uncompensated care
=	ESTIMATE OF UNCOMPENSATED CARE COST <sup>15</sup>

Uncompensated care costs impact hospital rates, private insurance premiums, local tax burdens and the available DSH and UPL funds. Some hospitals provide more uncompensated care than others, and those that do bear a greater burden. The issue is really about cost-shifting and identifying to whom the cost is shifted and making sure that cost is not shifted to paying customers.

Uncompensated care is also self-reported by hospitals, with little consistency between reporting mechanisms. For example, in 2004, hospitals estimated uncompensated care to be \$9.2 billion. By adjusting billed charges to allowable costs and accounting for other offsetting payments, HHSC estimates the cost of uncompensated care to be between \$443 million and \$2.3

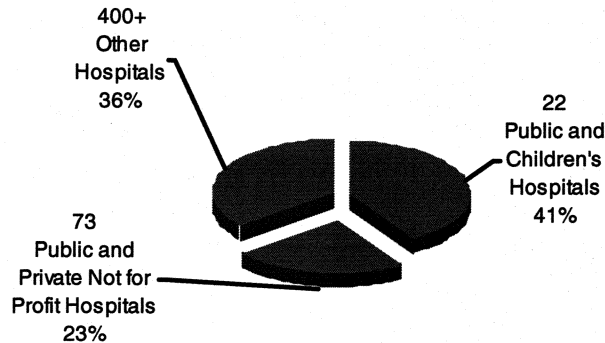
<sup>14</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, October 10, 2006, p. 10

<sup>15</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, October 10, 2006, p. 10

billion.<sup>16</sup> In turn, a more standardized reporting system based on costs rather than charges is needed to truly identify the actual amount of uncompensated care costs in Texas. The table below shows the distribution of uncompensated care provided by area hospitals.

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### **Uncompensated Care for FY 2003**



### **RECOMMENDATIONS**

The Senate Committee on Finance recommends that the 80th Legislature consider taking appropriate action to effectuate the following in regard to Hospital Reimbursement and Uncompensated Care:

1. Implement a new Medicaid hospital reimbursement system based on sound cost reimbursement principles.
2. The reporting of uncompensated care (defined to include bad debt, charity care and unreimbursed care) by Texas hospitals should be consistent for all hospitals and subjected to a standard set of adjustments that account for payments to hospitals that are intended to reimburse uncompensated care.
3. The state should consider all sources of revenue when restructuring the reimbursement system to better match public money with the money spent for public good. The issue is not only the value of uncompensated care being provided but also how much cost-shifting is taking place to pay for the uncompensated care.

<sup>16</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, October 10, 2006, p. 9

<sup>17</sup> Presentation to the Senate Finance Committee, Health and Human Services Commission, February 22, 2006, p. 16



Appendix A

**Senate Bill 1, 79th Legislature, Regular Session, 2005, Article II,  
Health and Human Services Commission, Riders 60 & 61**

60. Medicaid Provider Reimbursement. From funds appropriated above, the Health and Human Services Commission shall convene a workgroup to assist the Executive Commissioner in studying and making recommendations for changes in the hospital (both inpatient and outpatient services) reimbursement rate methodology. These recommendations shall include cost inflators, rebasing of the rates, and other alternatives, such as waivers that would combine Disproportionate Share Hospital (DSH), Graduate Medical Education (GME) and Upper Payment Limit (UPL) funds. Alternatives could be considered in determining hospital rates that would reward efficient providers, critical care providers, rural hospitals and special children hospitals, as well as incentives for hospitals to serve Medicaid clients and control medical cost. Workgroup members shall be composed of agency staff familiar with inpatient hospital rate methodology, external groups and representatives of the various hospital organizations. The Health and Human Services Commission shall prepare a report for consideration by the Eightieth Legislature. The report should contain options and the fiscal impact of the recommended changes to the hospital rate methodology submitted to the Legislative Budget Board and Governor by October 1, 2006.

61. Study Regarding Uncompensated Care. The Health and Human Services Commission shall conduct a study of the components and assumptions used to calculate Texas hospitals' uncompensated care amounts. The Commission shall provide a report to the 80th Legislature with recommendations for standardizing hospitals' uncompensated care amounts.

**Joint Interim Report on Funding Allocation and Project  
Funding Reductions at the Texas Department of  
Transportation**

**Senate Committee on Transportation &  
Homeland Security**

**Senate Committee on Finance**

# SENATE FINANCE COMMITTEE

79th Legislature

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SENATOR JUDITH ZAFFIRINI, Vice Chair  
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January 2007

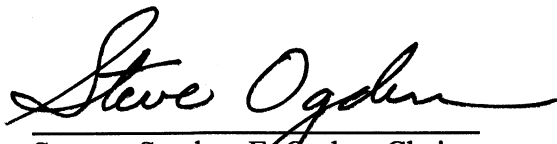
The Honorable David Dewhurst  
Lieutenant Governor  
State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

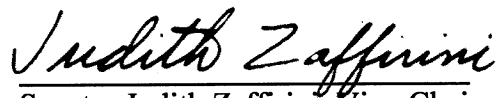
Dear Governor Dewhurst:

The Senate Finance Committee respectfully submits this report, which was written jointly with the Senate Transportation and Homeland Security Committee, regarding our Committees' Joint Interim Charges: 1. Review the process by which the Texas Department of Transportation Commission allocates funds to the districts through the Allocation Program. Include a description of all scoring mechanisms used in making allocations of resources and make recommendations for maximizing the use of these funds to meet Legislative objectives. 2. Review the process by which the Texas Department of Transportation Commission determines which federal funding sources should be implemented to comply with funding reductions mandated by Congress. Assess the Commission's options for determining how projects that were to be funded out of these reduced revenue sources will be funded this biennium.

We thank you for providing us the opportunity to address these important issues.

Respectfully submitted,

  
Senator Stephen E. Ogden, Chair

  
Senator Judith Zaffirini, Vice-Chair

  
Senator Kip Averitt

  
Senator Kim Brimer



Robert J. Deuell, RD  
Senator Bob Deuell

Robert Duncan  
Senator Robert Duncan

J - J. Amig  
Senator Juan "Chuy" Hinojosa

Kyle Janek  
Senator Kyle Janek

Jane Nelson  
Senator Jane Nelson

Florence Shapiro  
Senator Florence Shapiro

Senator Todd Staples

Royce West  
Senator Royce West

John Whitmire  
Senator John Whitmire

Tommy Williams  
Senator Tommy Williams



COMMITTEES:  
STATE AFFAIRS, CHAIR  
FINANCE  
JURISPRUDENCE  
NATURAL RESOURCES

**ROBERT DUNCAN**  
STATE SENATOR  
DISTRICT 28

January 9, 2007

The Honorable John Carona  
Chair, Senate Committee on Transportation and Homeland Security  
Sam Houston Building, Room 445  
Austin, Texas 78711

The Honorable Steve Ogden  
Chair, Senate Committees on Transportation on Finance  
Capitol Extension, Room E1.036  
Austin, Texas 78711

Dear Chairman Corona and Chairman Ogden:

Thank you for your leadership during the 79th Interim.

The work of the Senate Transportation and Homeland Security and Senate Finance committees on the joint charges is commendable. While the majority of the report indeed reflects my thoughts on our charges, I respectfully disagree with the findings and recommendations in the "Earmarks" section of Charge 2.

The report recommends that the Legislature petition Congress to reduce or eliminate the practice of earmarking. I agree with the goal of this recommendation, but believe it is not likely that Congress will eliminate the practice of earmarking in the foreseeable future. A petition from the Texas Legislature requesting that Congress reduce or eliminate the practice of earmarking will only serve to hinder the ability of the Texas Congressional delegation to compete with other states in securing funds for Texas' transportation infrastructure.

Thank you again for your leadership on transportation issues. I look forward to working with you during the 80th Legislature.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert Duncan", followed by a horizontal line.

Robert Duncan  
Texas State Senate  
District 28

LUBBOCK DISTRICT OFFICE:  
1500 BROADWAY  
SUITE 902  
LUBBOCK, TEXAS 79401  
(806) 762-1122  
1-800-546-9928  
FAX (806) 749-2828  
DIAL 711 FOR RELAY CALLS

CHILDRESS DISTRICT OFFICE:  
119 AVENUE B NW  
CHILDRESS, TEXAS 79201  
(940) 937-0909  
(888) 887-7027  
FAX (940) 937-6994  
DIAL 711 FOR RELAY CALLS

CAPITOL OFFICE:  
ROOM 3E.12  
P.O. BOX 12068  
AUSTIN, TEXAS 78711  
(512) 463-0128  
(800) 322-9538  
FAX (512) 463-2424  
DIAL 711 FOR RELAY CALLS

SAN ANGELO DISTRICT OFFICE:  
36 WEST BEAUREGARD  
SUITE 510  
SAN ANGELO, TEXAS 76903  
(915) 481-0028  
1-800-558-9928  
FAX (915) 655-2541  
DIAL 711 FOR RELAY CALLS

## Joint Charges

1. Review the process by which the Texas Department of Transportation Commission allocates funds to the districts through the Allocation Program. Include a description of all scoring mechanisms used in making allocations of resources and make recommendations for maximizing the use of these funds to meet Legislative objectives.
2. Review the process by which the Texas Department of Transportation Commission determines which federal funding sources should be implemented to comply with funding reductions mandated by Congress. Assess the Commission's options for determining how projects that were to be funded out of these reduced revenue sources will be funded this biennium.

## Introduction

On Wednesday, March 1, 2006, the Senate Committee on Finance and the Senate Committee on Transportation and Homeland Security met in a joint public hearing in Room E1.036 of the Capitol Extension, Austin, Texas, to take testimony on the Committees' joint interim charges.

The following witnesses testified on the two charges:

- Ric Williamson, Chairman, Texas Transportation Commission
- Ted Houghton, Member, Texas Transportation Commission
- Michael W. Behrens, Executive Director, Texas Department of Transportation
- Amadeo Saenz, Assistant Executive Director for Engineering Operations, Texas Department of Transportation
- James Bass, Chief Financial Officer, Texas Department of Transportation

## Joint Charge 1 -- Allocation

*Review the process by which the Texas Department of Transportation Commission allocates funds to the districts through the Allocation Program. Include a description of all scoring mechanisms used in making allocations of resources and make recommendations for maximizing the use of these funds to meet Legislative objectives.*

## Background

According to the Legislative Budget Board (LBB), the planning and development of transportation construction projects is a complex process. First, the need for a transportation project is identified through the input and involvement of cities, counties, Metropolitan Planning Organizations (MPOs), and citizen groups. To obtain federal funding for a project, current federal law requires the MPOs to develop a local transportation improvement program, which is a four-year, prioritized program of transportation projects covering a metropolitan planning area in a manner consistent with the metropolitan transportation plan.

After the MPO decisions are made, the Texas Transportation Commission (Commission) selects projects for inclusion in the Unified Transportation Program (UTP), a 10-year planning document that guides and controls project development for the Texas Department of Transportation (TxDOT) in a feasible and economical manner. The Commission also adopts transportation projects for its Statewide Transportation Improvement Program (STIP), a multiyear, statewide, intermodal program of transportation projects that includes a financial implementation plan and that must be implemented within each three-year period after the adoption of the program.<sup>1</sup>

In the past 25 years, Texas' road capacity increased only eight percent,<sup>2</sup> while over the past ten years, highway construction letting in Texas has increased by over 151 percent, growing from \$2.07 billion in Fiscal Year 1997 to a projected \$5.20 billion in Fiscal Year 2006.<sup>3</sup> Texans have expressed concerns to legislators regarding whether TxDOT's allocation processes are fair. These concerns are exacerbated by the increase in the dollar value of lettings, the rapid expansion of the use of tolls, and the potential for highway lettings "falling off" in later years as revenue sources, such as debt and the federal Highway Trust Fund become depleted.

In the context of the preceding history, TxDOT was asked to provide details regarding its methods of allocating projects and funding.

## **Guiding Principles**

In developing its Strategic Plan, TxDOT defined its agency mission as being to work cooperatively to provide safe, effective, and efficient movement of people and goods.<sup>4</sup>

Additionally, the Commission established "five goals that everyone at TxDOT should work to meet."<sup>5</sup> We want to reduce congestion, improve air quality, enhance safety, encourage economic opportunity and preserve the value of our transportation system." TxDOT reiterated in testimony at the joint committee hearing that, "As projects are developed, TxDOT works with its local partners to examine what a project will do to reduce congestion, improve safety, provide economic opportunities, improve air quality or increase the asset value of our system."

## **Allocation of State Transportation Resources**

In 2004, TxDOT revised its project and funding allocation methods by consolidating funding categories, revising formulas, and moving certain project selection authority to the local or MPO level. MPOs now produce Metropolitan Mobility Plans (MMP), which are combined into the state plan known as the Texas Metropolitan Mobility Plan (TMMP). These decisions are reflected in TxDOT's Unified Transportation Program (UTP), which now has 12 funding categories (down from 34) that comprise its "Operational Plan."

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<sup>1</sup> "Fiscal Size-Up 2006-2007," Legislative Budget Board.

<sup>2</sup> "Transportation Finance Needs and Options for the Future," Ric Williamson, Chairman, Texas Transportation Commission, Testimony to the Study Commission on Transportation Financing, April 19, 2006.

<sup>3</sup> Letter from Michael W. Behrens, P.E., TxDOT Executive Director, to Lt. Governor David Dewhurst, July 18, 2006.

<sup>4</sup> "TxDOT Has a Plan," TxDOT Strategic Plan 2007-2011, p. 2.

<sup>5</sup> "The Federal Surface Transportation System: Options for the Future," Ric Williamson, Chairman, Texas Transportation Commission, Testimony before the National Surface Transportation Policy and Revenue Commission, September 20, 2006.

The 12 categories are as follows:

- Category 1: Preventative Maintenance and Rehabilitation
- Category 2: Metropolitan Area Corridor Projects
- Category 3: Urban Area Corridor Projects
- Category 4: Statewide Connectivity Corridor Projects
- Category 5: Congestion Mitigation and Air Quality Improvement
- Category 6: Structures Replacement and Rehabilitation
- Category 7: Metropolitan Mobility/Rehabilitation
- Category 8: Safety
- Category 9: Transportation Enhancements
- Category 10: Supplemental Transportation Projects
- Category 11: District Discretionary
- Category 12: Strategic Priority

Active and proposed programming levels for each category for Fiscal Years 2006-2010 are as follows:

<b>Unified Transportation Program</b>						
	<b>Category</b>	<b>Programming for FY 2006</b>	<b>Proposed Programming for FY 2007</b>	<b>Proposed Programming for FY 2008</b>	<b>Proposed Programming for FY 2009</b>	<b>Proposed Programming for FY 2010</b>
1	Preventive Maintenance and Rehabilitation	\$1,100,000,000	\$1,100,000,000	\$1,125,000,000	\$1,325,000,000	\$1,325,000,000
2	Metro Corridor Projects	\$994,073,734	\$1,265,245,848	\$1,272,272,783	\$448,602,737	\$208,956,253
3	Urban Corridor Projects	\$114,470,852	\$164,474,390	\$190,402,853	\$69,015,806	\$32,147,116
4	Statewide Connectivity	\$390,028,765	\$492,668,782	\$490,401,970	\$172,539,514	\$80,367,789
5	CMAQ	\$131,421,656	\$141,603,849	\$147,435,908	\$148,598,114	\$152,786,703
6	Structure Rehabilitation	\$222,431,535	\$242,158,971	\$250,077,433	\$251,658,816	\$257,343,048
7	Metropolitan Mobility	\$224,455,571	\$246,148,084	\$258,692,885	\$261,267,745	\$270,356,504
8	Safety	\$370,671,189	\$367,269,091	\$334,416,199	\$138,894,580	\$142,719,880
9	Enhancements	\$82,461,224	\$82,461,224	\$82,461,224	\$82,461,224	\$82,461,224
10	Supplemental Transportation	\$206,637,520	\$213,236,081	\$219,253,563	\$224,067,550	\$228,894,238
11	District Discretionary	\$250,000,000	\$250,000,000	\$250,000,000	\$250,000,000	\$250,000,000
12	Strategic Priority	\$225,000,000	\$225,000,000	\$225,000,000	\$225,000,000	\$225,000,000
	<b>Planned Letting</b>	<b>\$4,311,652,046</b>	<b>\$4,790,266,320</b>	<b>\$4,845,414,818</b>	<b>\$3,597,106,086</b>	<b>\$3,256,032,755</b>

## Project and Funding Decisions

The Commission programs money based on estimated gas tax revenues and federal appropriations, deciding how much of the funding they receive goes into each category. As illustrated by the following table, the project decisions for many of these categories are made with local input from elected officials, MPOs, or Councils of Government (COGS). Only category 12 Strategic Priority Money is spent at the sole discretion of the Commission, and the money is usually committed one to four years in advance.

Executive Director Behrens testified that money is distributed to categories first, then projects are selected based on each category's formula and local decisions. Many of the category formulas are dictated by federal law.



**Funding Allocation Methodologies**

<b>CATEGORY</b>	<b>PROJECT INITIATION</b>	<b>FUNDING ALLOCATION METHODOLOGY</b>	<b>PROJECT SELECTION AUTHORITY</b>
<b>1 - Preventive Maintenance and Rehabilitation</b>	TxDOT District, with MPO input	Funds are allocated to TxDOT districts based on a formula created by the Category 1 Working Group, (MPO, Regional Planning Council, COG and TxDOT district representatives).	TxDOT districts select projects with MPO concurrence based on highway maintenance needs.
<b>2 - Metropolitan Area Corridor Projects</b>	MPO	Funds are allocated to Transportation Management Areas. The formula was created by the Category 2 Working Group (representatives from the 8 MPOs and 9 districts)	MPOs approve corridors and selects projects. The commission approves projects based on MPO's plan.
<b>3 - Urban Area Corridor Projects</b>	MPO	Funds are allocated to MPO based on a formula created by the Category 3 Working Group (representatives from the Urban Area MPOs and districts).	MPOs approve corridors and selects projects. The commission approves projects based on MPO's plan.
<b>4 - Statewide Connectivity Corridor Projects</b>	TxDOT District, with local input	Funds are allocated to this statewide connectivity effort by the commission for the improvement of highways connecting major metropolitan centers.	Corridors are prioritized using criteria developed by the Category 4 Working Group (MPO, regional planning councils, COG and district representatives). Commission approves.
<b>5 - Congestion Mitigation and Air Quality Improvement</b>	MPO	Funds are allocated to non-attainment areas based on the federal allocation formula used to distribute CMAQ funds to the states.	Projects are selected by MPOs in consultation with TxDOT and the Texas Commission on Environmental Quality.
<b>6 - Structures Replacement and Rehabilitation</b>	TxDOT District	Funds are allocated to bridge rehabilitation projects based on the condition of the each specific bridge.	Projects are selected using the Texas Eligible Bridge Selection System. Commission approves projects.
<b>7 - Metropolitan Mobility/Rehabilitation*</b>	MPO	Funds are allocated directly to Transportation Management Areas by FHWA.	Projects are selected by MPOs in consultation with TxDOT.
<b>8 - Safety</b> Highway Safety Improvement Program, Safe Routes to School, Railway-Highway Crossing, Safety Bond Program	TxDOT District	The commission allocates funds to districts based on specific project safety score using recognized safety evaluation formulas.	Projects are selected according to federally approved safety indices and prioritized listing. Commission approves projects
<b>9 - Transportation Enhancements</b>	Local Entities	Commission allocates funds to districts based on specific project recommendation by statewide selection committee.	Local entities nominate projects and FHWA determines eligibility. Projects are selected and approved by the commission on a per-project basis.
<b>10 - Supplemental Transportation Projects</b> State Park Roads, Railroad Grade Crossings Replanning, Railroad Signal Maintenance, Construction Landscaping, Coordinated Border Infrastructure Program and Congressional High Priority Projects	TxDOT District, Texas Parks and Wildlife Department, Other (federal allocation)	Commission allocates funds to districts with allocation formulas, using Texas Parks and Wildlife project selections or approves participation in federal programs selected by members of Congress and FHWA.	Projects are selected statewide by Traffic Operations Division or Texas Parks and Wildlife Department, local projects selected by districts. Federal projects are selected by Congress.
<b>11 - District Discretionary</b>	TxDOT District, with local input	Funds are allocated based on a formula created by the Category 11 Working Group, made up of members of MPOs, Regional Planning Organizations, and COGs.	TxDOT districts selects projects with MPO concurrence based on the needs of the area.
<b>12 - Strategic Priority</b>	Commission	Commission allocates funds.	Commission selects projects that meet strategic goals.

Source: Texas Department of Transportation

### **Relationship to the Appropriations Process**

Starting with the UTP, TxDOT begins its decision making process by reviewing when projects are scheduled to be awarded and the necessary developmental costs to get projects through various stages of completion. Based upon these projected contract award dates, TxDOT estimates the associated expenditures by fiscal year. It is this information which is then fed into the Legislative Appropriations Request and is the beginning for discussions with the Legislature on TxDOT's appropriations.<sup>6</sup>

Chairman Williamson testified that project planning and development take a number of years (environmental and right-of-way processes alone can take several years on a single project), with overall levels set based on TxDOT's estimate of revenue. He also explained that the 12 categories are used for programming (selecting and sequencing) projects, while the appropriations bill provides two years of funding to pay the bills.

At this time, nothing in TxDOT's appropriation bill delegates money directly into the 12 categories of TxDOT's UTP. TxDOT advised that it is not possible for the amounts listed in the 12 categories to be added together to match the level of funds appropriated in the various General Appropriations Act (GAA) strategies for several reasons. First, the amounts listed in the UTP categories are programming amounts (anticipated contract award amounts), while the amounts in the GAA are for expenditures over time. It is important to note that TxDOT does not charge expenditures back to the year of contract award, but instead charges the expenditures to the fiscal year in which the work is performed. A project that is programmed to be let in one year is likely to have expenditure impact in three or more years of appropriations. Secondly, amounts in the UTP are for the contract award amount and do not include other project-related costs such as planning, design, and right-of-way acquisition and other development services.

### **Debt Issuance**

TxDOT has a number of mechanisms available for the issuance of debt.

**Texas Mobility Fund.** In 2001, Senator Florence Shapiro authored legislation to create the Texas Mobility Fund to back bonds<sup>7</sup>. In 2003, the Legislature dedicated portions of the Driver's Responsibility Act and Statewide Traffic Fines to the fund; the Texas Mobility Fund revenue source was changed in 2005 to vehicle inspection fees (FY 2006), driver record and information fees (FY 2007), driver license fees (FY 2008), and certificate of title fees (FY 2009). The Texas Bond Review Board has approved issuance of up to \$4 billion based on revenue to the fund, which must have 110% coverage. These bonds have a 30-year maximum maturity. By December 2006, about \$3 billion will have been issued. James Bass testified in March of 2006 that the full \$4 billion available from Mobility Fund bonds will be committed in 12-18 months, and that under the \$4 billion cap, the bonds must be paid off before more can be issued.

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<sup>6</sup> Letter from Michael Behrens, P.E., TxDOT Executive Director to Senator John Carona, May 25, 2006.

<sup>7</sup> SJR 16, ballot Proposition 15: "The constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects." The enabling legislation was SB 4.

**State Highway Fund Bonds.** Because of a constitutional amendment adopted September 13, 2003<sup>8</sup>, TxDOT can now issue debt backed by the State Highway Fund. Statute limits this authority to the issuance of \$1 billion in bonds per year, up to a total amount of \$3 billion of debt, backed by the State Highway Fund. Statute also provides that at least \$600 million of the \$3 billion total debt allowed must be used for safety projects. These bonds must have a 20 year maximum maturity. By December 2006, about \$1.6 billion of these bonds will have been issued.

**Highway Tax and Revenue Anticipation Notes (HTRANs).** Proposition 14 also authorized TxDOT to issue short-term Highway Tax and Revenue Anticipation Notes to fund highway improvement projects (Transportation Code 201.961 et seq.). These are intended as a cash management tool. TxDOT can borrow up to two months' average revenue, for up to 24 months.

**Border Colonias Access Program.** This program authorizes the issuance of up to \$175 million in General Obligation (GO) bonds, administered by the Texas Public Finance Authority, for roads in and to colonias.

**Private Activity Bonds (PAB).** A PAB is generally a government bond used for private purposes and given tax-exempt status (whether it is taxable or tax exempt depends on the use of the funds, not the source). Federal law provides an annual state limit on the amount of private activities financed by tax-exempt bonds; Texas' 2005 limit is \$80 per capita or \$1.8 billion. Section 11143 of Title XI of SAFETEA-LU amended Section 142 of the Internal Revenue Code to authorize the addition of highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued. The US Department of Transportation recently allocated up to \$1.8666 billion for State Highway 121 (a six lane toll road in Collin and Denton Counties, including two major interchanges at US 75 and the Dallas North Toll Road, and related projects). These PABs are exempt from the state cap as a function of federal law.

### **Advantages of Debt Issuance**

Due to inflation, the costs of building transportation infrastructure today are cheaper than purchasing the same facilities in future years. In addition, the economic development resulting from constructing a facility creates a tax base that can pay for the debt service on the bonds. Texas has a low state debt burden compared with other states, ranking fifteenth among the 15 most populous states in state debt per capita in 2003.<sup>9</sup>

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<sup>8</sup> HJR 28, ballot Proposition 14: "The constitutional amendment providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund." Also referred to as Ogden Bonds. The primary enabling legislation was HB 471.

<sup>9</sup> Legislative Budget Board, Texas Fact Book 2006.

### **Uses of Transportation-Related Revenue**

Article 8 (Taxation and Revenue), Section 7-a of the Texas Constitution lays out the dedicated uses of motor fuels taxes and vehicle registration fees:

**Section 7-a - REVENUES FROM MOTOR VEHICLE REGISTRATION FEES AND TAXES ON MOTOR FUELS AND LUBRICANTS; PURPOSES FOR WHICH USED**

Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose.

During the March 2006 joint interim charge hearing, Chairman Williamson testified that the largest single non-highway construction related appropriation is the amount appropriated to the Department of Public Safety, \$443.9 million in FY 2005. Although the Legislature's appropriations to the Department of Public Safety are considered constitutionally permissible, as funds used to "police the highways," Chairman Williamson testified that the Commission would prefer to be able to use more of the fund for highway construction and other transportation needs. It is TxDOT's opinion that appropriations for the Department of Public Safety from the State Highway Fund should at least be limited to the Highway Patrol and Driver License functions. The Commission would also like to have fee and permit revenues related to motor carrier operations and enforcement, as well as vehicle sales taxes, directed to the State Highway Fund, and to discontinue other diversions that include the Comptroller's fund management function (1% of the motor fuels tax), and funding to the Higher Education Coordinating Board.

### **Toll Roads**

In response to a question regarding the Camino Colombia toll road, Chairman Williamson said that the lesson is that Texas should be careful in any commitments to toll roads. He noted that Camino Colombia was a wholly private project that had no state funds in it until TxDOT purchased it using strategic priority funds, and that TxDOT is taking a systems approach to toll roads to ensure that roads do not fail due to lack of connecting infrastructure.

### **Gas Taxes and Toll Roads**

In response to a question about whether changing motor fuels tax rates or appropriations could have an impact on the need for toll roads, Chairman Williamson responded that the gap could be bridged if the gas tax was raised to \$1.25 per gallon, but there is no reason to think that will happen. He also testified that raising the gas tax a nickel a year would only build three interchanges a year, compared to the 150 that are needed right now, and a tax of 55 cents per gallon would be needed just to maintain transportation funding with population growth and inflation.

Williamson also explained that if all transportation-related revenue was appropriated to TxDOT and all transportation federal funds were returned to Texas, it would lessen the need for some toll roads, but currently toll roads are necessary to address projects on the books today and the crush of population expected by 2030. In his conclusion, Williamson emphasized that in the meantime, people are paying a tax every day in terms of jobs lost, failing air quality, and worsening congestion.

### ***Findings and Recommendations***

**Allocation.** TxDOT is commended for its efforts to increase local involvement in decision making. Given the remaining complexity of formulas and distribution methods, TxDOT should review and update its methods of providing information on the geographic distribution of projects and funding (historic and future) in order to provide accurate, informative, and timely responses to legislative and constituent requests. Further, TxDOT should anticipate and prepare for increased inquiries due to the expansion of tolling and related issues (return of toll revenue to local areas, setting of toll rates, decisions involved in constructing roads through tolls instead of other methods) and make explanatory material readily available to the public.

Programming levels in the UTP should be subject to legislative approval.

**Cost Containment.** TxDOT should create and clearly articulate a plan for cost containment.

**Debt.** Limitations on debt issuance are statutory or practical, not driven by the Texas Constitution. The Legislature should increase the statutory and practical caps on the amount of debt that can be issued for transportation facilities.

**Information Accessibility.** The Legislature should adopt legislation requiring TxDOT to publish annually and make available on its website in a format that allows the information to be read into a database electronically, on both a statewide and by-county basis, at a minimum, details by fiscal year of Square Miles and Vehicles Registered, Population and Daily Vehicle Miles, Centerline Miles and Lane Miles, Construction, Maintenance and Contracted Routine and Preventive Maintenance Expenditures, Construction, Maintenance and Contracted Routine and Preventive Maintenance Expenditures (Combined), District, Division/Office Construction and Maintenance Employees, Statistical Comparison of TxDOT Districts, Grant Programs (Auto Theft Prevention Authority, Aviation Grant Awards, Aviation Capital Improvement Grants, Routine Airport Maintenance Program, Public Transportation Grant Program, Medical Transportation Program), State Infrastructure Bank Loans Approved, and Texas Traffic Safety Program Grants/Expenditures.

**Private Activity Bonds.** The Legislature should adopt legislation requiring TxDOT to submit any request for private activity bonds to the Bond Review Board prior to submission to federal agencies. The Bond Review Board will review and comment on the request and advise the Legislature of potential consequences to the State of Texas if the request is granted.

**Appropriation of Transportation-Related Revenue.** Article VIII, Section 7-a of the Texas Constitution defines the permissible expenditures from the State Highway Fund. While the Legislature has the constitutional authority to use dedicated state highway funds for non-highway construction purposes such as appropriations to the Department of Public Safety, the Legislature should, in times of budget surpluses, consider funding the Texas Department of Public Safety operations with General Revenue. The Legislature should periodically review whether transportation revenue streams currently directed to the General Revenue Fund should be redirected to the State Highway Fund in order to increase TxDOT appropriations for highway construction and other transportation needs.

**Trans-Texas Corridor.** TxDOT should integrate the Trans-Texas Corridor with the Texas Trunk System and improve the agency's efforts to explain the project to the public.

**Tolls.** Tolls should be set to cover costs and debt service on a given road. When the debt is retired, the toll should be eliminated or at least lowered to the amount needed to cover the road's maintenance costs. Toll equity levels should also be subject to legislative approval.

**Up-Front Payments.** Legislative appropriation of up-front payments received by TxDOT as a provision of a comprehensive development agreement should be required before the payments can be spent or applied to projects or operations.

**Comprehensive Development Agreements (CDAs) and Non-Compete Clauses.** The Legislature finds that TxDOT's aggressive implementation of Comprehensive Development Agreements has resulted in expansive use of this tool in advance of adequate public debate regarding its appropriate use. The Legislature should adopt legislation limiting the use of CDAs to instances where standard or alternative funding mechanisms are not available and local MPOs and transportation infrastructure agencies are in concurrence with their use.

The Legislature finds that it has provided insufficient guidance to TxDOT regarding the inclusion and use of noncompete clauses. The Legislature should adopt legislation prohibiting the inclusion of noncompete clauses or covenants not to build competing systems in Comprehensive Development Agreements, bond contracts, or other agreements. This prohibition should extend to all transportation infrastructure constructed by any public entity.

## **Joint Charge 2 -- Project Funding Reductions**

*Review the process by which the Texas Department of Transportation Commission determines which federal funding sources should be implemented to comply with funding reductions mandated by Congress. Assess the Commission's options for determining how projects that were to be funded out of these reduced revenue sources will be funded this biennium.*

## **Background**

### **Unreliability and Instability of Federal Funding Sources for Transportation**

During the March 1, 2006 hearing, TxDOT provided examples of the circumstances leading to unprecedented uncertainty in federal transportation funding affecting the funds reaching Texas:

- Continuation of "donor state" status in highway and transit programs
- Potential insolvency of the federal Highway Trust Fund
- Movement of funds from formula distribution to discretionary and demonstration programs
- Frequency of structural changes in programs
- Increase in earmarking funds
- Across-the-board and programmatic rescissions of previous federal funding commitments

TxDOT testified that there have been three recent federal transportation rescissions - one prior to the joint March 1, 2006 hearing and two subsequent rescissions. On December 28, 2005, \$159 million in transportation funding was rescinded by the federal government.<sup>10</sup> In April of 2006, due to the Department of Defense Appropriations Act, 2006, Public Law 109-148, the Federal Highway Administration (FHWA) notified TxDOT of another nationwide rescission of \$1,143,000,000 of unobligated federal-aid highway funds apportioned to the states. The Texas portion of this rescission was approximately \$90 million.

In July of 2006, pursuant to the Hurricane/War Supplemental Appropriations spending bill passed as a part of the Emergency Supplemental Appropriations Act, 2006, Public Law 109-234, the Federal Highway Administration notified TxDOT of a \$702,000,000 reduction in federal-aid highway funds apportioned to the 50 states. The Texas portion of this amount is approximately another \$56 million. Federal-aid reductions in the Texas apportionment this year now total \$305,000,000 and TxDOT believes that more rescissions are possible.

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<sup>10</sup> Letter from Ric Williamson, Chairman, Texas Transportation Commission to Chairman John Carona, April 25, 2006.



## Rescissions

TxDOT also provided a chart of rescissions in recent years:

Date	Federal Notice	Texas' Rescission Amount
December 28, 2005	N 4510.578	\$158,707,654
January 25, 2005	N 4510.540	\$102,562,220
February 20, 2004	N 4510.515	\$16,392,410
June 10, 2003	N 4510.508	\$19,668,487
September 24, 2002	N 4510.481	\$24,666,390

## Discussion

### Process of Identifying Funds to be Rescinded

TxDOT explained that upon receiving the rescission notice, states were encouraged to review projects funded from the older apportionment categories to determine if any of those funds could be applied to the rescission. TxDOT says it took great care to remove dollars from programs that would cause the least damage to their primary goals of congestion reduction, increased safety, economic opportunity, air quality improvements, and preserving the value of the state's transportation assets. TxDOT testified that it returned \$116,018,633.67 of unobligated Surface Transportation Enhancement Program (STEP) funds, making up the majority of the \$158,707,654 December rescission.<sup>11</sup> (Unobligated balances are dollars that have been awarded to local projects, but the projects have not gone to contract.)

In the Transportation Commission's judgment, the reason why the majority of the rescinded funds were chosen from STEP funds is that TxDOT believes that STEP funds have the weakest connection to the agency's stated goals of congestion reduction, enhanced safety, increased economic opportunity, improved air quality, and preserved value for the state's transportation assets. Chairman Williamson testified that over the life of a six-year reauthorization bill, \$2.47 billion cannot be spent on projects that would address system capacity needs, and that the need to spend transportation funds on courthouses does not compare to the need to address congested roads. As a result, the majority of the funding cuts chosen by TxDOT to satisfy all three rescissions consist of unobligated balances from the Surface Transportation Enhancement Program.

### Surface Transportation Enhancement Program (STEP) Funding

**Project Selection.** The Surface Transportation Enhancement Program (STEP), created in 1992, is a federal reimbursement program that is primarily used by local communities to enhance their current transportation system. The allocation is based on a federal apportionment. To be eligible for consideration, projects must demonstrate a relationship to the surface transportation system by either physically tying into the system, or by positively impacting the system in some way. The project must go above and beyond standard transportation activities. Projects are selected by the Texas Transportation Commission after applications are reviewed by the Federal Highway Administration for eligibility and by a state selection committee for merit.

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<sup>11</sup> "Identification of Funding Sources To Comply with Congressionally Mandated Funding Reductions," TxDOT, March 1, 2006.



**79th Legislature.** During the 79th Regular Legislative Session, the Legislature designated a total of \$119.3 million in STEP funding, to the extent allowable under federal law, to be used for courthouse preservation and six additional projects:

<b>GAA 2006-07 Biennium-TxDOT Transportation Enhancement Program Riders</b>			
<b>Article VII Rider #</b>	<b>Project</b>	<b>Amount</b>	<b>FHWA Determination as of 9/8/2006</b>
43	Tejano Monument	\$ 602,645	Ineligible
44	Courthouse Preservation	\$ 80,000,000	Pending
45	Battleship Texas	\$ 16,090,050	Ineligible
46	Juneteenth Monument	\$ 602,645	Ineligible
47	Woodall Rodgers Park	\$ 10,000,000	Eligible
48	Music History Museum	\$ 10,000,000	Ineligible
52	Houston Fire Museum	\$ 2,000,000	Ineligible
	<b>TOTAL</b>	<b>\$ 119,295,340</b>	

Chart Provided by the Legislative Budget Board

**Courthouse Preservation.** Courthouse Preservation was one of the approved uses for STEP Funds under previous federal transportation bills. Recognizing the value and significance of courthouse preservation, the Legislature adopted an appropriation rider last session to require the program's continuation:<sup>12</sup>

44. Courthouse Preservation Program Grants. Out of the amounts appropriated above, the Texas Department of Transportation shall make available during the biennium \$80 million in federal Transportation Enhancement Program funds administered by the department for courthouse preservation projects whenever such projects are approved by the Texas Historical Commission's Courthouse Preservation Program and meet federal funding requirements of the Transportation Enhancement Program as defined by federal Department of Transportation, Federal Highway Administration federal regulations in Title 23 of the United States Code. The Texas Historical Commission in conjunction with the Texas Department of Transportation will review courthouse preservation projects to determine if courthouse projects meet the federal Transportation Enhancement Program guidelines in Title 23 of the United States Code. It is the intent of the Legislature that funds appropriated above would cover the costs of administering courthouse projects approved for federal Transportation Enhancement Program funds. In addition, the Texas Department of Transportation may redirect obligated funds previously obligated for courthouse preservation under the Transportation Enhancement Program to other available projects should such courthouse projects fail to receive federal approval or federal Transportation Enhancement Program funds are not available due to changes in federal laws, rules, regulations, or appropriations.

**TxDOT Testimony.** The Texas Historical Commission has recently submitted several test courthouse cases to the Federal Government for approval to test the new qualification standards and are still pending approval, but TxDOT testified in the interim charge hearing that the language authorizing STEP program funding in the recent transportation authorization bill was

<sup>12</sup> Senate Bill 1 (General Appropriations Act), Regular Session, 2005.

recently rewritten, and that TxDOT does not believe that a majority of the currently proposed courthouse preservation projects will now be eligible for STEP funding. TxDOT further testified that STEP funds reduce revenues that would be available for transportation projects and that it has asked the federal government to grant the State of Texas the flexibility to utilize enhancement funds for hurricane preparedness and to assist in combating wildfires in the future. Regardless, Chairman Williamson testified during the March hearing that TxDOT will follow the law and honor the will of the Legislature to fund the enhancement projects listed in their appropriations bill pattern if the projects are approved by the Federal Government.

In addition to the Courthouse Preservation rider project in the chart above, five other rider projects have been submitted to TxDOT and the Federal Highway Administration for review. The FHWA has determined that most of the projects with direction by GAA riders to be funded with STEP funding are not eligible for STEP dollars. The Woodall Rodgers Parkway project has been the only project approved by the FHWA so far, while the test cases for Courthouse Preservation are still pending.

Presently, in spite of now \$305,000,000 in federal aid reductions, TxDOT is still assuring the Legislature that they will still be able to provide sufficient funding for all enhancement projects in progress and they anticipate having sufficient funding to address most of the "big ticket, high impact" enhancement projects which may be approved during the current call for projects.

### **Other Funding Issues**

**Earmarks.** Also discussed at the hearing was the fact that federal earmarks in the recent transportation reauthorization act - SAFETEA-LU - reduce the amount of Texas' apportionment, and do not bring extra money to the state. Of SAFETEA-LU's 208 congressional earmarks for Texas, totaling \$678 million, 83 (\$212 million) were projects not prioritized or even considered by the local metropolitan planning organizations. Because earmarks rarely cover the entire cost of the project, state funding of these 83 unplanned projects would require the transfer of \$1.2 billion away from more urgent projects already approved by local leaders.<sup>13</sup>

### ***Findings and Recommendations***

**Rescissions.** The Legislature should require TxDOT to create a formal mechanism for considering responses to federal rescissions that includes Legislative Budget Board and gubernatorial input.

**Enhancements.** While TxDOT has provided assurances that eligible transportation enhancement projects will be funded and carried out, its actions have created an appearance of the potential for subverting the Legislature's will. The Legislature should monitor TxDOT's implementation of the STEP program to ensure the Legislature's will is carried out, particularly in regard to courthouse preservation.

**Earmarks.** The Legislature should petition Congress to reduce or eliminate the practice of earmarking.

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<sup>13</sup> Letter from Michael Behrens, TxDOT Executive Director, to Chairman John Carona, May 25, 2006.